

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

Schneider
P. L. M.
29774

FILE: B-211818

DATE: November 13, 1984

MATTER OF: Durel R. Patterson - Reconsideration

DIGEST:

The location of an employee's official station is a question of fact, and the factors to be considered are: the administrative designation; the place where the employee performs the major part of the duties; and the length and nature of the employee's duties and assignments. Here, the employee performed some duties at the administratively determined official station, but performed a majority of his duties at another station. However, since the nature of his employment was itinerant with assignments to many different temporary duty stations, we hold that the administratively determined official station was, in fact, his official duty station. B-211818, February 14, 1984, sustained.

ISSUE

In our earlier decision, Durel R. Patterson, B-211818, February 14, 1984, we held that under the applicable provisions of the Joint Travel Regulations, Mr. Patterson was entitled to a reduced per diem while staying at his family residence in Baton Rouge, Louisiana, when he performed temporary duty in Baton Rouge. Our decision was based on the fact that Mr. Patterson did not commute from this residence to his official duty station in Simmesport, Louisiana.

The Finance and Accounting Officer for the New Orleans District, Corps of Engineers, Department of the Army, has requested reconsideration of this decision arguing that although Simmesport was administratively designated as Mr. Patterson's official duty station, the facts show that his official duty station was Port Allen, Louisiana, near Baton Rouge. Thus, the issue presented for reconsideration is what was, in fact, Mr. Patterson's official duty station for the period from November 1979 until October 31, 1982.

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We hold that Simmesport was Mr. Patterson's official duty station during the period in question for the reasons stated below.

BACKGROUND

Mr. Durel R. Patterson is employed as a Drill Rig Operator by the Department of the Army, New Orleans District, Corps of Engineers. When he was hired by the Army in 1972, his permanent duty station was New Orleans. During the next 6 years, Mr. Patterson's permanent duty station was administratively changed five times between New Orleans and Simmesport culminating with an official change to Simmesport on October 1, 1978. At that time, Mr. Patterson's family domicile was in Simmesport. In November, 1979, Mr. Patterson bought a house and moved to Baton Rouge, Louisiana, some 65 miles from Simmesport.

During his employment with the Army, Mr. Patterson has been in a travel status a majority of the time. The record shows that after his official duty station was designated as Simmesport on October 1, 1978, Mr. Patterson was assigned to work on many different temporary duty sites in Louisiana, including Franklin, Natchitoches, Morgan City, Port Allen, Baton Rouge, New Orleans, Lake Charles, Alexandria, Lafayette, Port Sulphur and Triumph. However, after he moved his family residence to Baton Rouge in November 1979, Mr. Patterson spent more than 50 percent of the time from November 1979 to October 1982 working in the Baton Rouge area and less than 10 percent of the time working in Simmesport. In October 1982, Mr. Patterson's official duty station was changed to Port Allen, Louisiana, near Baton Rouge.

The Army Finance and Accounting Officer states that we have ruled on numerous occasions that the location of an employee's official station is a question of fact and is not limited by the administrative designation. He also states that the employee's official station is the place at which he performs the major part of his duties and is expected to spend the greater part of his time. Therefore, he argues that from November 1979 to October 1982, Mr. Patterson spent the greater part of his time in Baton Rouge, and that Baton Rouge should now be retroactively designated as his official

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duty station during that time. He also states that when Mr. Patterson moved his residence to Baton Rouge, he validated the fact that his permanent duty station had been moved to Baton Rouge.

Mr. Patterson and the National Federation of Federal Employees (NFFE) argue that it was the agency that established Simmesport as his official duty station and that the agency cannot now retroactively change his permanent duty station to a temporary duty site. Mr. Patterson also notes that when he moved his residence to Baton Rouge he was performing most of his work in Natchitoches, and therefore his relocation to Baton Rouge did not show that he believed his permanent duty station was Baton Rouge. Finally, Mr. Patterson argues that the reason his duty station was changed to Port Allen in October 1982 was that a majority of the work for the drilling section was concentrated within a 50-mile radius of Port Allen and "everyone involved in drilling" in his unit was assigned to Port Allen.

ANALYSIS

Our decisions have held that the determination of what constitutes an employee's official duty station involves a question of fact and is not limited by administrative determination. Cecil M. Halcomb, 58 Comp. Gen. 744 (1979). In making that factual determination, all pertinent factors should be considered such as administrative determination, the length of the assignment, the nature of the duties performed, and the place where the greater amount of time is spent. See Gretchen Ernst, B-192838, March 16, 1979, Frederick C. Welch, 62 Comp. Gen. 80 (1982); and Daisy Levine, B-212614, February 22, 1984, 63 Comp. Gen. 225.

Generally, an employee is itinerant when the employee's assignments require substantial continuous movement from place to place in the field. Levine, cited above, and 22 Comp. Gen. 342 (1942). However, itinerant employees are subject, generally, to the same laws and regulations dealing with per diem as other classes of employees. 23 Comp. Gen. 162 (1943). Itinerant employees must perform some duty at their official duty site in order to be paid per diem for performing duty at temporary duty points. See Levine, cited above.

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Our decisions have also held that an official duty station may not be designated solely for the purpose of allowing additional compensation in the form of per diem allowances or relocation expenses. Levine, and Halcomb, cited above, and 31 Comp. Gen. 289 (1952). For example, in Levine, cited above, we held that itinerant employees who merely reported for duty and processed papers in the Albuquerque office could not have that location designated as their official duty station when all of their duties were performed in field work in Chaco Canyon, New Mexico. In Levine we denied the per diem claims of these employees for work performed in Chaco Canyon since those claims were based on the administrative designation of Albuquerque as the employees' official duty station.

In the present case, the facts show that Mr. Patterson was an itinerant employee who was frequently assigned to different sites and who rarely worked at one site for more than 1 month. Some months he worked at four different temporary duty sites. However, during the nearly 3-year period from November 1979 to October 1982, Mr. Patterson worked at least 10 days in Simmesport every 12 months. The facts also show that the agency officially designated Simmesport as his permanent duty station from 1978 until October 1982, and there is no indication that the agency selected this location for the purpose of increasing Mr. Patterson's entitlement to per diem. It was only after our Office authorized the payment of per diem at Baton Rouge that the Finance and Accounting Officer questioned the location of Mr. Patterson's official duty station.

If we agreed with the Finance and Accounting Officer's contention that Baton Rouge should be deemed Mr. Patterson's official duty station during the period in question, we note that such a determination would affect not only his per diem entitlement, but also his hourly rate of pay. As a prevailing rate employee, Mr. Patterson's rate of pay is determined by the prevailing rate in the local wage area. 5 U.S.C. §§ 5341-5349 (1982). As a result of several of Mr. Patterson's moves between New Orleans, Simmesport, and finally Baton Rouge, he received pay increases and pay

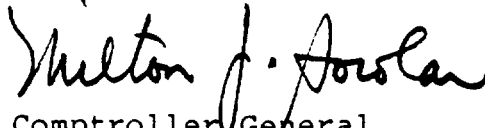
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decreases (with pay retention) depending upon the prevailing rates in the areas at the time of the change of station. We know of no basis to change Mr. Patterson's official duty station for per diem purposes without also changing his rates of pay to the rate of pay for the locality of his new official duty station.

Based on all of these considerations, we believe that the facts in this case show that Simmesport was Mr. Patterson's official duty station during the time in question. Although he was assigned to work in Baton Rouge more than 50 percent of the time, we are unable to conclude that this factor alone is persuasive enough to order a retroactive change of his assigned official duty station.

Finally, the Finance and Accounting Officer questions whether an employee's domicile and an employee's family domicile may be in different locations. The question pertains to our prior decision where we allowed Mr. Patterson per diem for temporary duty at the place of his family domicile (Baton Rouge) since he commuted to his official duty station in Simmesport from another place (his in-laws' residence). As we pointed out in our prior decision, the applicable provision of the Joint Travel Regulations (para. C 4552-2m) does not require that the employee maintain a separate domicile from which he commutes to work to his permanent duty station. For the purpose of this regulation, Mr. Patterson's in-laws' house need not be Mr. Patterson's domicile in order to allow per diem reimbursement when he is performing temporary duty at the place of his family domicile.

Accordingly, upon reconsideration we sustain our prior decision in Patterson dated February 14, 1984. Payment of Mr. Patterson's per diem entitlement should be made as soon as possible.

for 
Comptroller General
of the United States